

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #02	CCRB Case #: 202200784	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/13/2022 11:48 PM, Tuesday, 08/16/2022 9:41 AM	Location of Incident: § 87(2)(b) and the CCRB	18 Mo. SOL 7/13/2023	Precinct: 41		
Date/Time CV Reported Mon, 02/07/2022 8:26 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 02/07/2022 8:26 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Hugo Albarracin	00923	948597	041 PCT
2. LT Francisco Hernandez	00000	936753	041 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Pedro Cruz	25466	953792	CW TRAFF TF
2. PO Matias Leon	10489	949203	041 PCT
3. PO Nicholas Kim	09276	954004	041 PCT
4. PO Leomar Logrono	23978	972400	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A . LT Francisco Hernandez	Abuse: On January 13, 2022, Lieutenant Francisco Hernandez entered § 87(2)(b) in the Bronx.	§ 87(2)(g)
B . LT Francisco Hernandez	Discourtesy: On January 13, 2022, at § 87(2)(b) in the Bronx, Lieutenant Francisco Hernandez spoke discourteously to § 87(2)(b)	§ 87(2)(g)
C . PO Hugo Albarracin	Abuse: On January 13, 2022, Police Officer Hugo Albarracin searched § 87(2)(b) in the Bronx.	§ 87(2)(g)
D . LT Francisco Hernandez	Abuse: On January 13, 2022, at § 87(2)(b) in the Bronx, Lieutenant Francisco Hernandez forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g)
E . LT Francisco Hernandez	Untruthful Stmt.: On August 16, 2022, Lieutenant Francisco Hernandez provided a misleading official statement to the CCRB.	§ 87(2)(g)

## Case Summary

On February 7, 2022, § 87(2)(b) filed this complaint via the CCRB's website (Board Review 01). This case was originally assigned to Investigator Latrice Frazier and was reassigned to Supervising Investigator Jean-Paul Lozada on April 25, 2022.

On January 13, 2022, at approximately 11:48 p.m., officers from the 41<sup>st</sup> Precinct, including Lieutenant Francisco Hernandez, entered § 87(2)(b) apartment at § 87(2)(b) in the Bronx (**Allegation A – Abuse of Authority: Entry of Premises**, § 87(2)(g) after she had allegedly grabbed the building's superintendent by his neck. § 87(2)(b) refused to give the officers her full name, and Lieutenant Hernandez addressed her twice as § 87(2)(b) (**Allegation B – Discourtesy: Word**, § 87(2)(g) Police Officer Hugo Albarracin of the 41<sup>st</sup> Precinct searched § 87(2)(b) apartment for her identification (**Allegation C – Abuse of Authority: Search of Premises**, § 87(2)(g) The superintendent refused to press charges against § 87(2)(b) and the officers transported § 87(2)(b) to § 87(2)(b) Hospital (**Allegation D – Abuse of Authority: Forcible Removal to Hospital**, § 87(2)(g) where Police Officer Albarracin discovered that she had an open I-Card and placed her under arrest (Board Review 02).

Lieutenant Hernandez provided a misleading official statement to the CCRB on August 16, 2022 (**Allegation E – Untruthful Statement: Misleading Official Statement**, § 87(2)(g)

Body-worn camera (BWC) footage was obtained from the BWCs of Lieutenant Hernandez and Police Officers Albarracin, Pedro Cruz, Matias Leon, Nicholas Kim, and Leomar Logrono of the 41<sup>st</sup> Precinct. These videos are saved in IA#s 69-74 (Board Review 03-08) and are summarized in IA#181 (Board Review 09).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: On January 13, 2022, Lieutenant Francisco Hernandez entered § 87(2)(b) in the Bronx.**

**Allegation (D) Abuse of Authority: On January 13, 2022, at § 87(2)(b) in the Bronx, Lieutenant Francisco Hernandez forcibly removed § 87(2)(b) to the hospital.**

§ 87(2)(b) was interviewed by the CCRB on March 1, 2022 (Board Review 10). Lieutenant Hernandez was interviewed on August 16, 2022 (Board Review 11). Police Officer Albarracin was interviewed on October 25, 2022 (Board Review 12).

§ 87(2)(b) stated that she had one or two shots of Hennessy with a friend before returning home and going to bed. § 87(2)(b) heard a loud knock at her door and asked who was there. Officers then “burst” through § 87(2)(b) door, and she told them to get out. § 87(2)(b) had no memory of what happened after this, and she believed she had been sedated. Her memory resumes at § 87(2)(b) Hospital after she had already been handcuffed and placed under arrest. § 87(2)(b) made no mention of a dispute with her building's superintendent.

EVENT § 87(2)(b) (Board Review 13) notes that the superintendent for an assisted housing building reported to 911 that § 87(2)(b) had grabbed him by his neck, that § 87(2)(b) was intoxicated and suffered from a “mental health issue,” that she is known to have a knife and had previously pulled a knife on EMS, and that she has an “extremely violent history.” The job was marked as “Ambulance Case; EDP/Inside” and both EMS and NYPD were dispatched.

§ 87(2)(b) Medical Treatment of Prisoner Report (Board Review 14) states that § 87(2)(b) “was intoxicated and acting erratic at time of arrest.”

In Lieutenant Hernandez’s BWC footage (Board Review 03), beginning at runtime 01:00, the superintendent repeats the information from EVENT § 87(2)(b) to the officers while they are on their way upstairs to § 87(2)(b) apartment with EMTs, including the fact that, on the most recent occasion when EMS responded to § 87(2)(b) apartment, she “took out a knife on them.” At runtime 02:51, officers begin knocking on § 87(2)(b) door and ringing her doorbell, and at 04:18, § 87(2)(b) verbally refuses to open her door. At 04:55, § 87(2)(b) says she is going to call the police, and Police Officer Cruz says, “We’re right here.” At 07:10, Police Officer Cruz turns § 87(2)(b) doorknob and opens her door, which appears to be locked from the inside with a latch or chain. § 87(2)(b) unlocks the door, and then Police Officer Cruz pushes it open. § 87(2)(b) is fully nude, her speech is slurred and at times disjointed, and she refuses to come outside or let the officers inside. At 08:32, an officer asks § 87(2)(b) to put on a shirt or gown, and § 87(2)(b) says, “No.” At 08:51, Police Officer Leon, Police Officer Cruz, and Lieutenant Hernandez enter § 87(2)(b) apartment, and § 87(2)(b) says they are not welcome in her apartment. At 11:40, Lieutenant Hernandez orders the officers to handcuff § 87(2)(b). At 13:06, Police Officer Cruz tries to cover § 87(2)(b) who is still nude, and then he winces in pain and says, “She kicked me in my fucking balls.” The officers walk § 87(2)(b) out of the apartment and into the hallway, and at 14:38, § 87(2)(b) says, “You’re a dumb ass bitch and I’m going to kill you.” § 87(2)(b) is ultimately covered with a blanket, strapped into a stretcher, and taken to an ambulance waiting outside. The officers and EMTs do not appear to sedate § 87(2)(b) while she is in her apartment.

Lieutenant Hernandez’s statement is generally consistent with his BWC footage. He stated that when he entered § 87(2)(b) apartment, he had intended to arrest § 87(2)(b) for the allegations made by the superintendent. Lieutenant Hernandez and the EMTs both determined that § 87(2)(b) needed to be hospitalized due to her “belligerence” and general demeanor, though Lieutenant Hernandez did not recall the EMTs saying anything about why § 87(2)(b) needed to be hospitalized.

Police Officer Albarracin stated that he and the other officers entered § 87(2)(b) apartment when she left the door and went toward the back of the apartment. The officers followed her into the apartment because the call was for an emotionally disturbed person possibly armed with a knife, and the officers did not know what § 87(2)(b) was “going for” or if she was going to grab anything when she went to the back of the apartment. The officers entered the apartment to have “a clear vision of what she’s doing.” Police Officer Albarracin believed the EMTs made the ultimate decision to bring § 87(2)(b) to the hospital, but he did not speak to the EMTs about their assessment of § 87(2)(b).

The courts have established that warrantless entries into private residences are presumed unconstitutional, with limited exceptions for consent, exigent circumstances, hot pursuit, the emergency doctrine, and the plain view doctrine (Payton v. New York, 445 U.S. 573, 1979 – Board Review 25).

Courts have applied a number of different factors to determine whether exigent circumstances are present, including but not limited to “(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the crime; (4) strong reason

to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry.” People v. McBride, 14 N.Y.3d 440, (2010) (Board Review 26).

Officers may also enter a private dwelling without a warrant if they reasonably believe that there is an emergency at hand, that their immediate assistance is needed to protect life or property, and that they have a reasonable basis to associate the emergency with the location. People v. Rodriguez, 77 A.D.3d 280 (2010) (Board Review 15).

Patrol Guide Procedure 221-13 (Board Review 16) defines an emotionally disturbed person as “a person who appears to be mentally ill or emotionally deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others,” and states that emotionally disturbed persons must be removed to a hospital in an ambulance.

The superintendent informed both the 911 operator and the officers in-person that § 87(2)(b) while intoxicated, had grabbed him by his neck, had pulled out a knife on EMS the previous time they came to her apartment, suffered from a “mental health issue,” and had a violent history. The call was marked as an “EDP” job and both EMS and officers were dispatched. The officers arrived at § 87(2)(b) apartment with EMS to discover her nude and seemingly intoxicated. § 87(2)(g)

Furthermore, based on the information provided by the superintendent about § 87(2)(b) assault of him and attempted assault of EMS on a prior occasion, and their observations of § 87(2)(b) when they arrived with EMS § 87(2)(g)

In addition to the facts discussed above, before being placed in the ambulance, § 87(2)(b) refused to get dressed, kicked Police Officer Cruz in his groin, and threatened to kill the officers. § 87(2)(g)

**Allegation (B) Discourtesy: On January 13, 2022, at § 87(2)(b) in the Bronx, Lieutenant Francisco Hernandez spoke discourteously to § 87(2)(b)**

**Allegation (E) Untruthful Statement: On August 16, 2022, Lieutenant Francisco Hernandez provided a misleading official statement to the CCRB.**

In Lieutenant Hernandez’s BWC footage (Board Review 03), at runtime 12:34, an officer asks, “What’s your name, miss?” and § 87(2)(b) who is already handcuffed, replies, “Mind your business.” An officer says, § 87(2)(b) and § 87(2)(b) says, “Fuck you.” Lieutenant Hernandez then says, “§ 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) then moves toward Lieutenant Hernandez, looks in his direction, and says, “Fuck you, bitch. You fucking asshole!” At 15:00, § 87(2)(b) mispronounces “pendejo,” and Lieutenant Hernandez responds, “It’s peñejo, § 87(2)(b) § 87(2)(b) (These utterances appear to come from the same voice and are most clearly heard in Lieutenant

Hernandez's BWC footage.)

As discussed in **Allegations A and D** above, § 87(2)(b) memory lapsed while she was still in her apartment, and she made no mention of any officer referring to her as § 87(2)(b) § 87(2)(b)

Before he was shown his BWC footage, Lieutenant Hernandez stated that he did not recall whether he called § 87(2)(b) § 87(2)(b) § 87(2)(b). After reviewing his footage, Lieutenant Hernandez was unable to identify the voice that calls § 87(2)(b) § 87(2)(b) on either occasion, and he did not recall whether the voice was his own.

Police Officer Albarracin did not believe any officer referred to § 87(2)(b) as § 87(2)(b) § 87(2)(b)

While officers are generally prohibited from using profanities toward civilians, they may use profanities "in the context of a dynamic situation over which [they are] attempting to gain control," but may not do so when it "[serves] no legitimate purpose but to belittle" a civilian (PD v. Pichardo, DAO DCT Case Number 2015-15012, Board Review 17).

The NYPD is committed to "treating every citizen with compassion, courtesy, professionalism, and respect" (Patrol Guide Procedure 200-02, Board Review 18).

Although § 87(2)(b) was uncooperative and combative throughout the incident, when Lieutenant Hernandez called § 87(2)(b) § 87(2)(b) § 87(2)(b) she had already been handcuffed, and the officers were trying to get her full name. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Administrative Guide Procedure 304-10 (Board Review 19) prohibits officers from intentionally making misleading official statements, which it defines as a statement that is intended to misdirect the fact finder and materially alter the narrative by intentionally omitting material facts or making repeated claims of "I do not remember" or "I do not know" when a reasonable person under similar circumstances would recall, or have been aware of, such material facts.

After reviewing his BWC footage, Lieutenant Hernandez stated that he was unable to identify the voice that calls § 87(2)(b) § 87(2)(b) § 87(2)(b) and that he did not recall whether the voice was his own. The voice is most clearly audible in Lieutenant Hernandez's BWC footage, both utterances appear to come from the same voice, and § 87(2)(b) moved toward Lieutenant Hernandez and said, "Fuck you, bitch" after he called her § 87(2)(b) the first time § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (C) Abuse of Authority: On January 13, 2022, Police Officer Hugo Albarracin searched § 87(2)(b) in the Bronx.**

§ 87(2)(b) stated that when she awoke in the hospital, she spoke to an officer who said he had

her Medicaid card. The officer told § 87(2)(b) that the card was found on top of a dresser in her bedroom, and that someone else had given it to him. This led § 87(2)(b) to believe her apartment had been “ransacked.”

§ 87(2)(b) is identified by name in EVENT § 87(2)(b) (Board Review 13) and the BWC footage shows that building superintendent provided her full name § 87(2)(b) to the officers once they reached the 5<sup>th</sup> floor, prior to the officers engaging with § 87(2)(b) (runtime 2:37 in Lieutenant Hernandez’s BWC footage (Board Review 03)).

In Lieutenant Hernandez’s BWC footage (Board Review 03), at runtime 02:40, the superintendent tells the officers § 87(2)(b) full name when they initially go upstairs to the fifth floor.

In Police Officer Albarracin’s BWC footage (Board Review 04), at runtime 11:48, Police Officer Albarracin asks § 87(2)(b) “Where’s your ID?” § 87(2)(b) who is strapped in the stretcher, responds, “Your mother’s gonna die, bitch.” Police Officer Albarracin then enters § 87(2)(b) apartment, followed by Police Officer Logrono and Police Officer Kim. At 12:02, Police Officer Albarracin picks up § 87(2)(b) work ID from the top of a cabinet, and he picks up and examines a paper that was on § 87(2)(b) bed. At 12:22, Police Officer Logrono finds § 87(2)(b) ID and hands it to Police Officer Kim. The officers then exit the apartment.

Police Officer Albarracin stated that § 87(2)(b) did not have any form of identification on her after she was removed from her apartment. He asked § 87(2)(b) if she had any ID, and she “didn’t answer nicely.” Police Officer Albarracin went back inside § 87(2)(b) to find § 87(2)(b) ID. § 87(2)(b) did not ask Police Officer Albarracin to do this, and no one instructed Police Officer Albarracin to do this. Police Officer Albarracin did not enter the apartment for any reason other than to find § 87(2)(b) ID. Police Officer Albarracin believed he needed § 87(2)(b) ID to verify her identity, to obtain her date of birth to give to EMS so they can check her medical history, and to obtain the information he needed to prepare an AIDED card. Police Officer Albarracin believed § 87(2)(b) name was provided in the “rundown” of the original job from central dispatch, and he acknowledged that he had access to this “rundown” on his department phone. After escorting § 87(2)(b) to the hospital, Police Officer Albarracin returned to the building and spoke to the superintendent about what had happened.

Lieutenant Hernandez stated that once § 87(2)(b) was removed from her apartment, he asked the officers to secure the apartment. Lieutenant Hernandez did not know if any officers entered § 87(2)(b) apartment to look for her ID, if any officer located her ID, or if any officer removed anything from her apartment, other than the blanket they used to cover her naked body. After reviewing his BWC footage, which shows Police Officer Albarracin entering the apartment at runtime 15:28 (Board Review 03), Lieutenant Hernandez stated that his understanding was that the officers entered the apartment to secure the door, and he had no knowledge of the officers doing anything else inside the apartment. If officers are unable to identify someone they are arresting, they will originally be processed as Jane or John Doe. At some point after they are arrested, their identity is determined through fingerprints or some other method. Lieutenant Hernandez did not believe there was a procedure for processing an “emotionally disturbed person” as “Jane Doe.”

Patrol Guide Procedure 216-03 (Board Review 27) defines an “unidentified person” as the “subject of an aided/collision case and is: a. Unable to identify himself or such information cannot be determined at once.” Upon responding to the scene of an aided case with an unidentified victim, officers must “interview neighbors/witnesses to obtain information regarding [the] identity of relatives or friends of the aided/collision victim,” and then “accompany [the] subject to [the] hospital and obtain any information that may assist in identifying [the] subject from hospital

authorities.”

Police Officer Albarracin stated that his sole purpose for re-entering the apartment was to retrieve § 87(2)(b) ID, and he and Lieutenant Hernandez cited no factors that would have permitted the officers to search § 87(2)(b) apartment. § 87(2)(b) had already been strapped into a stretcher in the hallway, and the officers had no probable cause that anyone who had committed a crime was inside the apartment; § 87(2)(g)

At no point did § 87(2)(b) offer her consent for the officers to search her apartment for her ID, or to otherwise go back inside her apartment for any reason. Further, the emergency situation the officers initially responded to had been abated once § 87(2)(b) was strapped into the stretcher, and the officers had no indication that another emergency was taking place inside the apartment after this point.

In addition, Police Officer Albarracin did not follow the procedure set forth in Patrol Guide Procedure 216-03 to identify § 87(2)(b). Police Officer Albarracin correctly stated that § 87(2)(b) full name was provided in EVENT § 87(2)(b) whose “rundown” he had access to during the incident. Furthermore, the superintendent had stated § 87(2)(b) name to Lieutenant Hernandez before the officers initially entered her apartment. However, Police Officer Albarracin did not consult the EVENT or ask the superintendent or any other staff member of the assisted housing facility for § 87(2)(b) name, or the name of any of her friends or relatives, and he instead searched § 87(2)(b) apartment for her ID without her consent.

Because Police Officer Albarracin’s sole reason for re-entering § 87(2)(b) apartment – to retrieve her ID so he can prepare an AIDED report and EMS can check her medical history § 87(2)(g)

§ 87(2)(g)

#### Civilian and Officer CCRB Histories

- § 87(2)(b)  
§ 87(2)(b)  
■ § 87(2)(b)  
■ § 87(2)(b)  
■ § 87(2)(b)  
■ § 87(2)(b)
- Lieutenant Francisco Hernandez has been a member of service for 17 years and has been a subject in four other CCRB complaints and five other allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Hugo Albarracin has been a member of service for 12 years and has been named a subject in one other case and two other allegations, neither of which was substantiated. § 87(2)(g)

#### Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.



- As of November 29, 2022, the Office of the New York City Comptroller had no record of any notice of claim filed by § 87(2)(b) regarding this incident (Board Review 23).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 02

Investigator:	<u>JP Lozada</u>	<u>SI Jean-Paul Lozada</u>	<u>12/06/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Alexander Opoku-Agyemang</u>	<u>IM Opoku-Agyemang</u>	<u>12/6/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date